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OGC Has Reviewed

PERS 72 16 34

OLC: 78-3766/1
29 December 1978

MEMORANDUM FOR:

[redacted]
Office of General Counsel

[redacted]
Office of Finance

[redacted]
Office of Personnel

FROM:

[redacted]
Chief, Legislation Staff
Office of Legislative Counsel

SUBJECT: Draft Legislation; "Classification and
Compensation Act of 1979" (U)

1. We have received from the Office of Management and Budget a draft bill proposed by the Civil Service Commission which would significantly change the present General Schedule compensation system. The bill would eliminate the General Schedule and replace it with a Clerical and Technical Service and a Professional and Administrative Service, a move designed to lessen the variation between Federal and Non-Federal sector pay rates for similar kinds of work. (U/IUO)

2. The CIA is specifically excluded from the present classification Act [5 U.S.C. 5102(a)(1)], and the draft legislation does not purport to include us in the new compensation system. Our Agency has chosen to structure its pay system according to the General Schedule system, however, and the draft bill, which is a key component of the Administration's Civil Service reform program, is thus of considerable importance. Your offices may wish to consider whether it would be advisable for the Agency to adhere to the proposed new system if it becomes law, or whether the Agency should explore the feasibility of establishing its own compensation system. (U/IUO)

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3. Included in the package from the Office of Management and Budget are transmittal letters to the Congress, a summary of major provisions in the draft bill, the draft bill itself, a statement of purpose and justification, and a section-by-section analysis. Please review these materials and forward any comments you may have on the specifics of the draft bill to [redacted] of my staff, by COB Friday, 12 January 1979 in order that the Agency's views may be forwarded before the deadline established by the Office of Management and Budget. Considerably more time is, of course, available to study the basic question outlined above. (U/IUO) ST

4. My staff will monitor this legislation in the 96th Congress, and we will keep you informed of its progress. (U/IUO)



Attachments:
As Stated

cc:
DDA

(w/summary of major provisions and
sectional analysis only)

AT IG [redacted]
Comptroller

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SUMMARY OF MAJOR PROVISIONS OF DRAFT BILL

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(1) TOTAL COMPENSATION COMPARABILITY POLICY

A total compensation comparability policy relating to pay and benefits would be established for most Federal employees and the President would be authorized to adjust Federal supplemental benefits in addition to rates of pay in order to achieve comparability of total pay and benefits between the Federal and non-Federal sectors.

(2) SPLIT OF THE GENERAL SCHEDULE

The present General Schedule and its corresponding grading and pay system would be eliminated and replaced by new classification and pay systems for the Professional and Administrative Service (PAS), and the Clerical and Technical Service (CTS).

(3) PROFESSIONAL AND ADMINISTRATIVE SERVICE

Pay for the PAS would be nationwide, and would be set by the present pay comparability process with the President, the President's Compensation Agent, the Federal Employees Compensation Council, and the Advisory Committee on Federal Compensation playing the same roles they now play with respect to General Schedule pay.

(4) CLERICAL AND TECHNICAL SERVICE

Pay for the CTS would be set on a locality basis by the President's Compensation Agent with the Federal Employees Compensation Council and the Advisory Committee on Federal Compensation playing somewhat the same roles they now play with respect to General Schedule pay except that these entities would be limited to providing views and recommendations on policy proposals associated with the compensation plan.

(5) SPECIAL OCCUPATIONAL SERVICES

For a limited number of occupations or groups of occupations where there are unusual non-Federal labor markets or employment conditions which cannot be accommodated effectively under the PAS or the CTS, the President's Compensation Agent would be empowered to establish Special Occupational Services. These Special Occupational Services would have classification and pay structures suited to the special characteristics of the affected occupations and could be established on a national or locality basis, or a combination of both, as warranted. The Federal Employees Compensation Council and the Advisory Committee on Federal Compensation would play the same roles for Special Occupational Services as for the CTS. These Special Occupational Services would be somewhat similar in concept to special schedules established under the Federal Wage System.

(6) INCLUSION OF STATE AND LOCAL GOVERNMENTS SURVEY

The PAS, CTS and Special Occupational Services would have pay comparability as their underlying principle, but comparability would be with "non-Federal" pay instead of "private enterprise" pay; that is, the use of State and local pay data would be permitted where necessary. The proposed legislation would permit the local pay system for clerical and technical employees to be based on either local area pay surveys or some statistical indicator of the difference between national and local area average pay. Full-field data surveys, such as National Survey of Professional, Administrative, Technical and Clerical Pay (PATC), would not be required by law to be conducted every year. Abbreviated surveys or appropriate statistical indicators of changes in salary levels could be used to adjust pay in the years between full-field surveys.

(7) PAY SYSTEMS SPECIAL AUTHORITY

The President would be given special authority to establish Federal executive branch pay systems when new systems are needed to adequately recruit and manage a quality workforce, or to abolish such pay systems when no longer needed. The President's Compensation Agent would be required to periodically review all Federal executive branch pay systems, including those established by statute, to determine if particular pay systems should continue to exist separately, should be eliminated, should be combined with other separate systems or should become part of the Government-wide systems.

(8) PREMIUM PAY SPECIAL AUTHORITY

The President would also be given special authority to establish, modify, consolidate, or abolish Federal premium pay, allowances, and differentials provisions pertaining to a civil service employee in the executive branch of the Government in order to eliminate conflicting or contradictory requirements, and provide equitable premium compensation to all Federal employees working under similar circumstances.

(9) FEDERAL WAGE SYSTEM

Subchapter IV of Chapter 53, title 5, U.S.C. pertaining to the Federal Wage System would be amended by the following changes:

- o The provision referred to as the "Monroney Amendment" which requires the use of out-of-area wage rate data in Federal wage surveys under certain circumstances, would be repealed.

- o The requirement for a payline fixed at step two and for five step-rates in each non-supervisory grade with prescribed waiting periods for within-grade advancement would be repealed.
- o The requirement for uniform 7.5 percent and 10 percent differentials for second and third shift night work would be repealed.
- o The wage survey coverage would be expanded to require surveys of non-Federal establishments outside of private industry, e.g., State and local governments.
- o The wage survey schedule requirements would be amended to require full-scale wage surveys in each wage area at least every third year rather than every second year.

(10) PREMIUM PAY

Subchapter V of chapter 55, title, U.S.C. pertaining to premium pay would be amended by the following changes:

- o Divides coverage among exempt/nonexempt lines.
- o Hours of work definitions are enlarged to include the concept of suffered or permitted and to include paid absences from duty. Title 5 is made equal to FLSA.
- o Eliminates overtime entitlements for work in excess of 8 hours in a day.
- o Exempt employees are to be paid at a rate prescribed by OPM.
- o Nonexempt employees are to be paid at a rate of 1-1/2 times their regular rate of pay. Same as FLSA.
- o Nonexempt travel time is to be treated the same as FLSA. Exempt travel time to be prescribed by OPM.
- o Compensatory time is discretionary to the agency head for exempt employees or at the request of nonexempt employees.
- o Performance of any nonovertime work at night shall be compensated for by night pay. Presently this work must be regularly scheduled.
- o Annual premium pay for standby duty and administratively uncontrollable work limited to exempts and nonexempt protectives. This no longer applies to nonexempts. Also, excludes wage employees from annual premium pay provisions. They have their own statutory entitlement to night and hazard pay under 5343.
- o Limits Sunday pay for nonovertime work to actual number of hours worked or one period of service. This eliminates entitlement to pay for two Sunday shifts.
- o Limits aggregate compensation of exempts only to PAS-4. Removes this limitation for nonexempts. Same as FLSA.
- o Authorizes premium pay to nonexempt employees when the period of training is by, in, or through a government facility.

- o Limits Sunday pay for nonovertime work to actual number of hours worked or one period of service. This eliminates entitlement to pay for two Sunday shifts.
- o Limits aggregate compensation of exempts only to PAS-4. Removes this limitation for nonexempts. Same as FLSA.
- o Authorizes premium pay to nonexempt employees when the period of training is by, in, or through a government facility.
- o Extends premium pay provisions to wage employees, both appropriate and non-appropriated fund.
 - overtime for standby duty
 - statutory entitlement to holiday pay and call-back overtime pay
 - compensation time in lieu of overtime is voluntary
- o Excludes Special Occupational Service employees since the President's Agent is authorized to establish premium pay for these Services.
- o Excludes special project employees. OPM to prescribe.

SECTION ANALYSIS

To accompany a bill to amend title 5, United States Code, to provide classification and compensation plans for various categories of Federal employees grouped under Services, and for other purposes.

The first section titles the bill as the Classification and Compensation Act of 1979.

Section 2. Classification Amendments

Subsection (a) of section 2 amends section 5101 of title 5 relating to the classification of positions by prescribing a comprehensive policy for grouping and identifying individual positions by services, classes and grades or pay levels so that the resulting position classification structures will establish and maintain internal job alignment and will facilitate external alignment of pay with non-Federal pay rates for the same kinds and levels of work. The effect of the change is to not only create a better balance between internal job alignment and external alignment of pay but to also allow for a closer external alignment of pay with those non-Federal activities outside of private industry. Currently there is a restriction of pay surveys to private employers only.

Subsection (b) of section 2 is a technical amendment to section 5102 (a)(1) of title 5 striking out reference to "Atomic Energy Commission" in subparagraph V and inserting instead "Nuclear Regulatory Commission."

Subsection (c) of section 2 amends section 5102(a)(4) of title 5 by rewording the definition of "class" or "class of positions" to provide that similar treatment of a class or class of positions shall be done with respect to such positions within a particular service; that is, the Professional and Administrative Service (PAS), the Clerical and Technical Service (CTS), or the Special Occupational Services.

Subsection (d) of section 2 amends section 5102(a)(5) of title 5 by rewording the definition of "grade" to make it clear that each grade relates only to its particular service established by chapter 53 of this title.

Subsection (e) of section 2 amends section 5102(a) of title 5 by adding definitions in paragraphs (6), (7), (8), (9), (10), and (11) for "range," "pay level," "service," the "Professional and Administrative Service," the "Clerical and Technical Service," and the "Special Occupational Services," respectively. It is intended that the term "pay level" would be used, for example, in those cases where a grading system would be inappropriate, such as rank-in-person, separately stated job salary rates, or supervisory pay structures. With respect to the classification plans of Special Occupational Services, such plans may be based on a position classification system, in the same manner as the CTS and the

PAS, or may be based on other methods as determined to be appropriate by the Office of Personnel Management.

Subsection (f) of section 2 first provides a technical amendment recognizing the change of name of the Executive Protective Service to the United States Secret Service Uniformed Division, and second amends section 5102(c)(5) of title 5 by striking out the clause "and members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title." This change is required because the Secretary of the Smithsonian Institution will no longer fix the pay rates of the National Zoological Park Police Force. The employees assigned to the police force of the National Zoological Park shall be paid at an appropriate grade and per annum rate under one of the newly designated Services.

Subsection (g) of section 2 is a technical amendment to section 5102 (c)(23) of title 5 recognizing the change of name of the Patent Office, Department of Commerce, to the Patent and Trademark Office, Department of Commerce.

Subsection (h) of section 2 amends section 5102(c)(25) of title 5 relating to exceptions to chapter 51 by substituting PAS-1 for GS-18.

Subsection (i) of section 2 amends section 5102(c) of title 5 by striking the word "or" at the end of paragraph (26); by adding the word "or" at the end of paragraph (27); and by exempting "special project employees" from the statutory provisions governing pay under the General Schedule and the Prevailing Rate Systems and from the usual provisions relating to hours of work and premium pay. The amendments provide the statutory authority, now lacking, to clarify the Office of Personnel Management's role in such programs as the President's Stay-in-School Campaign.

Subsection (j) of section 2 amends section 5104 of title 5 by replacing the statutory basis for grading General Schedule positions with criteria to be followed by the Office of Personnel Management in establishing classification systems for the PAS, the CTS, and the Special Occupational Services, as appropriate. This change has the effect of allowing the Office of Personnel Management, acting within specified criteria, to regulate the basis for grading positions, for example, either by using the General Schedule grade definitions, as they apply to the services; or by modifying that grade structure, as needed, to fulfill the policy of equitable internal alignment and greater comparability with the non-Federal sector. The section also authorizes the Office of Personnel Management to establish classification or job alignment plans, as appropriate, for the Special Occupational Services. As a result, classification systems for the Special Occupational Services may vary in concepts from traditional job evaluation plans, to rank-in-person schemes, depending on the needs of the service.

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Subsection (k) of section 2 amends section 5105 of title 5 relating to standards for classification of positions by inserting words to make it clear the standards are issued for both the PAS and the CTS, and the Special Occupational Services as appropriate; to allow flexibility in the method and format to be used in preparing standards without changing the basic intent of the law that the basis for classifying positions shall be prescribed in standards issued by the Office of Personnel Management; to establish the official class titles; and to indicate the placement by the Office of Personnel Management of classes within grades of one of the services instead of the present placement of classes within grades of the General Schedule by the Office of Personnel Management.

Subsection (l) of section 2 amends section 5106 of title 5 in subsection (a) to provide an exception from the classification process for those Special Occupational Services where a classification plan is not appropriate, and by rewording subsection (b) to reflect the placement of each class in its appropriate grade and service including a Special Occupational Service when appropriate.

Subsection (m) of section 2 amends section 5107 of title 5 to make clear that the classification process applies to the appropriate Service, except for those Special Occupational Services where a classification plan is not appropriate, as well as to class and grade.

Subsection (n) of section 2 amends section 5108 of title 5 relating to classification of supergrade positions in the catchline by redesignating GS-16, 17, and 18 as PAS-3, 2, and 1, respectively; in the text by redesignating GS-16 as PAS-3, GS-17 as PAS-2, and GS-18 as PAS-1 wherever they occur and by striking out the reference to subsection (a) wherever it appears and inserting in place thereof subsection (a)(2) to reflect the paragraph renumbering; in subsection (a) by replacing references to majority of Civil Service Commissioners with Director of the Office of Personnel Management, by designating subsection (a) as subsection (a)(2), and by adding as subsection (a)(1) a paragraph designating the three highest grades of the Professional and Administrative Service as defined under section 5102(a)(8) of this title as, in descending order, PAS-1, PAS-2, and PAS-3.

Subsection (o) of section 2 amends section 5109 of title 5 relating to positions classified by statute in subsection (a) by striking out reference to grade GS-14 and inserting in place thereof PAS-5; in subsection (b) by striking out reference to GS-18 and redesignating it as PAS-1 and by striking out reference to section 5108(a) and replacing it with 5108 (a)(2); and in subsection (c) by striking out reference to GS-18 and redesignating GS-18 as PAS-1, and by striking out reference to section 5108(a) and replacing it with section 5108(a)(2).

Subsection (p) of section 2 amends sections 5110, 5111, 5112, and 5113 of title 5 to conform to the incorporation of the new "Service" concept in the Federal compensation program.

Subsection (q) of section 2 amends section 5111(a) of title 5 relating to revocation and restoration of agency authority to classify positions by adding the phrase "pay levels" paragraph (5) and by adding the phrase "a particular service" as paragraph (7). These changes clarify the scope of the Office of Personnel Management's authority to revoke or suspend agency classification authority to incorporate actions relating to the placing of a position within its appropriate service, grade or pay level.

Subsection (r) of section 2 amends section 5112 of title 5 in subsection (a)(4) by striking out references to "class or grade" and replacing them with "service, class, grade, or pay level"; and in subsection (b) to clarify that an employee request for a classification determination by the Office of Personnel Management is a statutory right of review.

Subsection (s) of section 2 amends section 5114 of title 5 relating to reports on supergrade positions in the catchline to reflect the redesignation change from GS-16, 17, and 18 to PAS-3, 2, and 1, respectively; and in subsection (a) by striking out the references to section 5108(a) and GS-16, 17, and 18 and replacing them with references to section 5108(a)(2) and PAS-3, 2, and 1, respectively.

Subsection (t) of section 2 amends section 5115 of title 5 to make the issuance of regulations by the Office of Personnel Management for the administration of chapter 51 subject to such policies as the President may prescribe. This is a conforming change to that provision of section 5304 which is already in law.

Subsection (u) of section 2 amends the analysis of chapter 51 to reflect the retitling of section 5104, formerly the statutory basis for grading positions, as classification systems; and to reflect in sections 5108 and 5114 the retitling of supergrade positions--GS-16, 17, and 18 as levels PAS-3, 2, and 1, respectively.

Section 3. Pay Systems Amendments

Subsection (a) of section 3 amends section 5301 of title 5 to establish a total compensation comparability system by adding a new subsection (a) which defines total compensation as the combined value of pay and benefits; by setting forth in subsection (b) the policy of Congress in four principles which apply inclusively to employees under chapter 53 of title 5, including Prevailing Rate Systems employees under subchapter IV of chapter 53, with the exception of nonappropriated fund employees as defined under section 5342(a)(2)(B) and (C), but do not apply to employees under subchapters II and VI of chapter 53, which contain provisions

relating to the Executive Schedule and miscellaneous provisions dealing with scientific and professional positions, administrative law judges and others. The first principle directs that total compensation comparability be established for appropriate groups of Federal employees and broadens the comparison frame for comparability from "private enterprise" to "the non-Federal sector," thus providing for comparison with State and local government compensation in the Federal compensation-setting process. The second principle states that Federal total compensation be equal for similar kinds and levels of Federal work within a designated pay area. The third principle specifies that pay distinctions be maintained in keeping with work and performance distinctions. Lastly, the fourth principle states that the total compensation of the Professional and Administrative Service, the Foreign Service of the United States, and the Department of Medicine and Surgery of the Veterans Administration shall be interrelated (these three compensation systems are designated as the national compensation systems for the purpose of this chapter in (g) below); by setting forth in subsection (c) the purpose of the Federal compensation program as being that of providing a combined value of pay and benefits which is adequate and equitable for recruiting and retaining a well-qualified workforce; by establishing in subsection (d) the PAS under which employees are paid on the basis of a nationwide pay schedule or schedules, the CTS under which employees are paid on the basis of local pay schedules, and by authorizing the President's Compensation Agent to establish, as appropriate, the Special Occupational Services under which employees may be paid on the basis of local or nationwide pay schedules or a combination of both; by indicating in subsection (e) that for the purpose of chapter 53, with the exception of subchapters II, IV, and VI, "agency," "employee," "position," "class," "grade," "range," "pay level," and "service" have the same meanings given them by section 5102 of title 5; by indicating in subsection (f) that employees, except those excluded from coverage by section 5102 of this title, are to be paid on the basis of the appropriate service as established by subsection (d) of this section; by defining national compensation system in subsection (g) to mean the PAS, subchapter IV of chapter 14 of title 22 relating to the Foreign Service of the United States, and chapter 73 of title 38 relating to the Department of Medicine and Surgery of the Veterans Administration; and by requiring in subsection (h) that the fixing and adjusting of total compensation of each national compensation system be carried out in accordance with the principles of subsection (b) of this section and the provisions of sections 5035, 5306, 5308, 5309, and 5310 of title 5.

Subsection (b) of section 3 amends section 5303 of title 5 relating to the establishment of special rates of basic pay by striking out reference to "private enterprise" in subsection (a) and replacing it with "the non-Federal sector," thus providing a conforming amendment to include a comparison with State and local government pay rates in the special rate procedure when needed; by inserting the word "pay" before

the words "level" or "levels" each time those words appear to incorporate the new term "pay level"; by striking out the reference to section 5332 and replacing it with reference to Services established under sections 5301(d)(1) and (2); and by striking out reference to section 5335(a) in subsection (c) and replacing it with reference to sections 5372 and 5382.

Subsection (c) of section 3 amends section 5304 of title 5 relating to Presidential policies and regulations by replacing the wording of the section with wording giving the Office of Personnel Management and other agencies as designated by the President authority to issue regulations for the administration of chapter 53, subject to the policies the President may prescribe.

Subsection (d) of section 3 amends section 5305 of title 5 relating to annual compensation reports and adjustments in the catchline by replacing the word "pay" with "compensation" to conform with the policy of total compensation comparability; in the text by striking out the words "statutory pay" wherever they occur and replacing them with the words "national compensation" which has the effect of excluding the CTS and Special Occupational Services except where specifically included; by revising subsection (a)(1) to designate in law the composition of the President's Compensation Agent as being that of the Director of the Office of Personnel Management as Chairperson and the Director of the Office of Management and Budget and the Secretary of Labor as members; by revising subsection (a)(1)(A) to require a report which (on the basis of national surveys, which are no longer required to be performed annually, or other measures of non-Federal pay, pay change, and benefits as supplied by BLS) first compares the rates of pay for the national compensation systems with non-Federal pay for similar kinds and levels of work, and second, compares the value of Federal benefits with the value of non-Federal benefits on the basis of benefit evaluations performed by the Office of Personnel Management; by revising subsection (a)(1)(B) to specify that the Agent's report shall make recommendations for appropriate adjustments in benefits, in addition to rates of pay, in accordance with the principles of total compensation comparability; by revising subsection (a)(2) to state that after considering the report of his Agent and the findings and recommendations of the Advisory Committee on Federal Compensation, as renamed, the President shall adjust the total compensation of each national compensation system by adjusting rates of pay, or by making adjustments in benefit provisions, as he deems appropriate under new section 5309, or by an appropriate combination of such pay and benefit adjustments; by revising the last sentence of subsection (a)(3) to indicate that the report transmitted to the Congress shall recommend the percentage adjustments in the rates of pay and adjustments in benefits to be made under the PAS and under the other national compensation systems; by inserting in subsection (b) "and sections 5382 and 5392 of this title" after "section" to indicate that the subsection refers to all Services that replaced the General Schedule;

by redesignating the Federal Employees Pay Council as the Federal Employees Compensation Council (FECC); by including in subsection (b)(1), pertaining to the establishment of a FECC, the requirement that the FECC shall be composed of representatives of employee organizations which represent substantial numbers of employees from all of the various services collectively which are proposed to replace the General Schedule and that this membership shall remain constant, whether the discussion relates to the national compensation systems, CTS, or Special Occupational Services; by including in subsection (b)(2), pertaining to giving thorough consideration to the views and recommendations of the FECC, the clear authority of the FECC to provide their views and recommendations for these Services with respect to types of benefits to be surveyed (such as those for retirement, death, disability, illness, and leave), survey coverage for both pay and benefits, the process of comparing Federal rates of pay with non-Federal rates of pay for similar kinds and levels of work, the adjustments in benefit provisions that should be made and their relationship to pay adjustments, but limiting authority to only the national compensation systems with respect to the adjustment of pay rates necessary to achieve comparability; by amending subsection (c)(1) to provide alternative plan authority for the national compensation systems, CTS, Special Occupational Services, Prevailing Rate Systems, and benefit adjustments under new section 5309; by amending subsection (c)(2) to provide that the disapproval of an alternative plan shall be by enactment of a joint resolution rather than by the present procedure for one House disapproval by the Congress and to reflect that upon a joint resolution becoming law, the compensation adjustments for the national compensation systems, the prevailing rate systems, the CTS, the Special Occupational Services, and other employees covered by a benefit system under title 5 shall be made in accordance with subsection (m) of the section; by revising subsection (l) to include "and benefit provisions" after "rates of pay" to specify that rates of pay and benefits becomes applicable to the positions in a national compensation system; by amending subsection (m) to provide that should a joint resolution disapproving an alternative plan become law as provided in subsection (c)(2) of this section, the President shall adjust the rates of pay of the national compensation systems by appropriate amounts reflecting the changes that have occurred in non-Federal pay for the various levels of work during the twelve month period preceding the most recent national survey or other measure of non-Federal pay as such changes have been measured under subsection (a)(1)(A) of this section, and that in addition compensation adjustments for the prevailing rate systems, the CTS, the Special Occupational Services, and for other employees covered by a benefit system under title 5 shall be made in amounts determined to be appropriate to provide equitable treatment in relationship to the treatment afforded the national compensation systems; in subsection (n) by adding "or benefit provisions" after "rates of pay" and by changing the word "increases" to "adjustments" in order to specify that pay and benefit adjustments shall modify, supersede, or render inapplicable other provisions of law or previous actions; by revising

subsection (o) to add benefit provisions to the requirement for printing rates of pay in the Federal Register and the Code of Federal Regulations; and by amending subsection (p) to reflect that annual pay adjustments are not equivalent increases in pay within the meaning of sections 5372 and 5382 of title 5.

Subsection (e) of section 3 amends section 5306 of title 5 by substituting "Compensation" for "Pay" in the catchline so that it reads "Advisory Committee on Federal Compensation"; by similarly amending subsection (a) to substitute "Advisory Committee on Federal Compensation" for "Advisory Committee on Federal Pay"; by revising subsection (b) to indicate that the Committee will review the reports of the President's Compensation Agent to include not only the national compensation systems but the CTS and Special Occupational Services as well, and to reflect the addition of benefit proposals to the Agent's report; and by amending subsection (f) so that services of experts or consultants may be obtained at rates not to exceed the highest rate of basic pay being paid under the PAS.

Subsection (f) of section 3 amends section 5307(a)(2) of title 5 relating to pay fixed by administrative action by deleting the reference to General Schedule and replacing it with reference to PAS.

Subsection (g) of section 3 amends chapter 53 of title 5 by adding two new sections: "5309. Adjustment of Benefits; effect on pay fixing authorities" and "5310. Total Compensation Advisory Panel". The nine subsections of the new section 5309 establish the benefit adjustment authority and the basis for its use, create a Congressional oversight role, and provide for Presidential control over compensation adjustments made by other pay-fixing authorities. Subsection (a) gives the President the authority to adjust appropriate benefit provisions, notwithstanding any other provision of law, in order to carry out the policy and purpose of the total compensation comparability system. Under this authority, the President may adjust benefit provisions including, but not limited to, provisions relating to the types and amounts of benefits and contributions for benefits. The President may group employees, as appropriate, for the purposes of establishing, adjusting, or discontinuing benefit provisions. For example, a single benefits package may apply to all employees whose benefits are adjusted under this section, or, if the President determines that more than one benefits package or set of provisions is appropriate, he may group employees by occupational and/or geographical distinctions. In addition, except for employees under a national compensation system, the President will prescribe the effective dates for benefit changes. Subsection (b) requires that benefit adjustments under the authority be based on appropriate surveys of benefits conducted by BLS, which shall include benefits for retirement, death, disability, illness, leave, and other benefits which the President considers appropriate for measuring and comparing total compensation. The survey of these benefits conducted by BLS is to support the data and information requirements of the Office of Personnel Management in its evaluations and comparisons of benefit provisions. Subsection (c) establishes the authority of the Office of Personnel Management to

develop the methodology to be used in the evaluation of benefits adjusted under this section and comparable non-Federal sector benefits and to perform evaluations and comparisons of those benefits. Subsection (d) requires the President to inform Congress of any proposed benefit change at least 30 days prior to the effective date of the proposed change and allows Congress to disapprove the proposed change by a joint resolution approved by the President, or in the event of Presidential objection, a two-thirds override vote of each House of Congress.

Subsections (e) through (l) lay down the rules for each House of Congress with respect to the case of joint resolutions described by this section; Subsection (n) provides that any adjustment of benefits under this section will cause related changes, required for consistency, to be made in all provisions of law enacted prior to the adjustment and in any prior recommendation or adjustment which took effect under this section or prior provisions of law. Subsection (n) requires that adjustments in benefits made under this section be printed in the Federal Register and the Code of Federal Regulations. Subsection (o) provides that the effective date of any adjustment shall be determined under conversion rules prescribed by the President or by any agencies designated by the President. Subsection (p) provides that individuals who are covered by a benefit under this title, but are not under a pay system that is subject to the principles of total compensation comparability, will be subject to adjustments in that benefit under this section in accordance with policies prescribed by the President. Subsection (q) provides that the President shall direct other pay-fixing authorities for employees whose total compensation is fixed and adjusted under this chapter to take into account differences in Federal and non-Federal benefit values in determining pay adjustments under their jurisdiction.

The six subsections of the new section "5310. Total Compensation Advisory Panel", establish the Panel, set its functions, and provide for its operation. Subsection (a) establishes the Panel and provides that it shall consist of three persons appointed by the President. Subsection (b) sets forth two functions that the Panel will perform to assist the Office of Personnel Management: first, the Panel shall recommend any actuarial determinations and assumptions needed to measure total compensation, including future rates of inflation, salary increase, and interest; second, the Panel shall advise on any technical matters concerning pay and benefit evaluation, as requested by the Office of Personnel Management. These functions will be performed only by the Panel acting as an independent body. Subsection (c) provides that actuarial determinations and assumptions approved by the Office of Personnel Management shall be used in measuring and comparing total compensation notwithstanding any other provision of law. Each member of the Panel is entitled under subsection (d) to pay at the daily equivalent of the rate for level V of the Executive Schedule and to travel expenses. Subsection (e) provides that administrative support will be provided for the Panel by the Director of the Office of Personnel Management. The Panel may, under subsection (f), appoint and fix the pay of such personnel as are necessary to carry out its functions.

Subsection (h) of section 3 amends section 5318 relating to the adjustments of rates of pay of the Executive Schedule by striking "General Schedule" and replacing it with "PAS".

Subsection (i) of section 3 amends subchapter III of chapter 53 of title 5 by striking "General Schedule Pay Rates" in the subchapter heading and adding "Pay Rates Under the Services."; by repealing section 5331 relating to definitions and the application of subchapter III (these provisions have been incorporated into section 5301 and now apply to all of chapter 53 with the exception of subchapters II, IV, and VI); and by repealing section 5332 relating to the General Schedule basic pay schedule. This has the effect of removing from law the statutory schedule, including the number of step rates for each GS grade level and is consistent with new sections 5372, 5382, and 5392, under which authority is provided to the President to establish pay schedules for PAS and to the President's Compensation Agent to establish pay schedules for CTS and Special Occupational Services, including the determination of the appropriate numbers of grades or pay levels, width of rate ranges, and the number of step rates or other methods for advancement within the rate range.

Subsection (j) of section 3 amends section 5333 of title 5 relating to the appointment of new employees at the minimum rate of their grade, and higher rates for supervisors of wage board employees by striking the word "wage-board" from the catchline and adding after the word "employees" the phrase "paid under other systems"; by amending subsection (a) to make it clear that the provisions of the section apply to a position under one of the Services established in section 5301(d)(1) and to give the head of an agency advance in-hiring rate authority at all grades or pay levels and by permitting the Office of Personnel Management, when it determines appropriate, to prescribe conditions under which an employing agency may take final action on certain appointments (under present law, advance in-hiring rate appointments may be made only to grades GS-11 and above and must have prior approval of that Office in each individual case); in subsection (b) by striking "Civil Service Commission" and replacing it with the "Office of Personnel Management", by striking the phrase "any such prevailing rate employee" and inserting in lieu thereof "any employee under a different Service or pay system" in order to extend the provision that the pay rate for supervisors be above that for subordinates to supervisors of employees in other Services or pay systems, and by providing for the setting of the supervisory pay adjustment at a rate above the maximum of his/her grade or pay level. Presently this provision applies only to General Schedule supervisors of wage grade employees.

Subsection (k) of section 3 amends section 5334 of title 5 relating to rate of change of employee position or type of appointment by amending subsection (a) to make it clear that the provisions of this section apply to an employee under one of the Services established in section 5301(d)(1), to replace reference to the Civil Service Commission with the Office of Personnel Management, and to add the words "or pay

level" to make it applicable to supervisory schedules where no grade is involved; by striking the word "or" after subsection (a)(6); by adding paragraph (8) to cover the action of an employee moving from one Service to another Service and paragraph (9) to cover the action of an employee being promoted or transferred to a position at a higher grade or pay level; by rewording subsection (b) by adding the words "or pay level" to the word "grade" each time it appears; by substituting a minimum six percent pay adjustment on promotion in place of the current "two-step" provision, since the number of step-rates and the amount of pay level increments may vary for the Services and there would no longer be a uniform meaning for "two-steps" among the Services; by further amending subsection (b) by adding a provision which permits the Office of Personnel Management to issue regulations providing for the setting of pay of a repromoted employee in such a manner that the employee does not, as an end result of a repromotion action, receive a higher rate of pay than he/she would have earned had he/she remained in the higher grade or pay level or its equivalent, or his/her highest previous rate, whichever is higher; and in subsection (c) by revising the section to effect deleting the words "of service" each time they occur, adding the words "or pay level" to the word "grade" each time it occurs to make it applicable to supervisory schedules where no grade is involved, and replacing the word "service" in 5334(c)(2) with the words "employment or membership" so as not to be confused with the newly created Services (no change in meaning is intended); in subsection (e) by adding the words "or pay level" to the word "grade" each time it appears, to substitute the word "rate" for the word "step", and to replace the word "service" with the word "employment"; and by adding subsection (f) in which the term "rate of basic pay" is defined. This change is designed to assure the exclusion of all differentials and additional pay of any kind when an individual is converted with his/her position from another pay system into or among the white collar pay systems.

Subsection (l) of section 3 repeals section 5335 of title 5 relating to periodic step-increases. This material has been incorporated in sections 5372 for PAS and 5382 for CTS.

Subsection (m) of section 3 amends section 5336 of title 5 relating to additional step-increases by striking out the word "step" from the catchline; by striking out the words "Civil Service Commission," "step-increases" and "step-increase" in subsection (a) and replacing them with the phrases "Office of Personnel Management" and "pay advancement within the range of rates of basic pay of a grade or pay level" to reflect the fact that step rates might not be used for measuring pay advancement within a grade or pay level; and by revising subsection (b) to eliminate the reference to section 5335 which is repealed and to substitute appropriate references to the PAS and CTS.

Subsection (n) of section 3 repeals section 5338 of title 5 relating to Commission authority to issue regulations for the administration of subchapter III of chapter 53 of title 5. This authority has been incorporated in section 5304.

Subsection (o) of section 3 amends section 5341 of title 5 relating to policy for prevailing rate systems by limiting principle (3) to non-appropriated fund employees, as defined under section 5342(a)(2)(B) and (C), who are not under the principles of total compensation comparability (this principle states that the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area); by revising principle (4) to state that "the level of total compensation" (in lieu of "the level of rates of pay") will be maintained so as to attract and retain qualified prevailing rate employees; and by adding a new principle (5) which states that the principles of total compensation comparability will apply to prevailing rate employees with the exception of nonappropriated fund employees.

Subsection (p) of section 3 amends section 5343 of title 5 relating to prevailing rate determinations in subsection (a) by making it subject to amended paragraph (3) of that subsection, and by amending (a)(3) to say that a lead agency will take into account the effect of benefit comparisons in establishing and adjusting wage schedules for those prevailing rate employees who are under the principle of total compensation comparability, as directed by the President.

Subsection (q) of section 3 amends section 5347 of title 5 relating to the Federal Prevailing Rate Advisory Committee (FPRAC) in paragraph (e) by adding benefit provisions that may be adjusted under new section 5309 to the matters that FPRAC shall study in order to advise the Office of Personnel Management, and by adding a provision for FPRAC to submit, in addition to the annual report now submitted, another annual report to the Office of Personnel Management and the President for transmittal to Congress, on the total compensation of prevailing rate employees, with the exception of nonappropriated fund employees, as defined under section 5342(a)(2)(B) and (C) of this title, by a date specified by the President. This report may include views and recommendations with respect to types of benefits to be surveyed (such as those for retirement, death, disability, illness, and leave), the coverage of benefit surveys, and the adjustments in benefit provisions that should be made and their relationship to pay adjustments; and in paragraph (g) relating to rates of pay for members of the Federal Prevailing Rate Advisory Committee by changing the reference schedule for the pay of the Chairman from the "General Schedule" to the "PAS", and by replacing references to "Chairman of Civil Service Commission" and "Civil Service Commission" to "Director of the Office of Personnel Management" and "Office of Personnel Management," respectively.

Subsection (r) of section 3 amends section 5361 of title 5 relating to definitions for purposes of grade and pay retention by striking out reference to General Schedule and substituting PAS, CTS, or Special Occupational Service; and by deleting the reference to lack of funds and curtailment of work as reasons for not providing salary retention in a reduction-in-force situation.

Subsections (s) through (v) of section 3 amends sections 5362, 5363, 5365, and 5366 of title 5, respectively, relating to grade and pay retention by adding the words "or pay level (s)" to make it applicable to supervisory schedules or to Special Occupational Services where no grade is involved.

Subsection (w) of section 3 amends section 5371 of title 5 relating to Scientific and Professional Positions by striking out reference to GS-16 and GS-18 and relabeling these references as PAS-3 and PAS-1, and by striking out reference to Civil Service Commission and substituting Office of Personnel Management.

Subsection (x) of section 3 amends section 5373 of title 5 relating to the limitation on pay fixed by administrative action by striking out reference to GS-18 and relabeling it as PAS-1.

Subsection (y) of section 3 amends section 5374 of title 5 relating to miscellaneous positions in the executive branch by striking out the reference to the General Schedule and substituting reference to the PAS pay schedule established under section 5372, and by striking out reference to Civil Service Commission and substituting Office of Personnel Management.

Subsection (z) of section 3 repeals section 5375 relating to the police force of the National Zoological Park as the pay of these employees will be fixed under one of the newly designated Services.

Subsection (aa) of section 3 amends chapter 53 of title 5 by adding a new section "5376. Special Project Employees" after section 5375. Special project employees are defined as employees who are employed under an economic or educational opportunity program for whom pay may be fixed by agency heads in accordance with regulations prescribed by the Office of Personnel Management.

Subsection (bb) of section 3 amends chapter 53 of title 5 by adding three new subchapters to provide for the establishment of classification and compensation plans for various categories of Federal employees grouped under various Services. The new subchapters are:

- SUBCHAPTER VII - PROFESSIONAL AND ADMINISTRATIVE SERVICE
- 5371. Purpose.
- 5372. Compensation plan.

SUBCHAPTER VIII - CLERICAL AND TECHNICAL SERVICE

5381. Purpose.

5382. Compensation plan.

5383. Annual report.

SUBCHAPTER IX - SPECIAL OCCUPATIONAL SERVICES

5391. Purpose.

5392. Compensation plans.

5393. Annual report.

The specific provisions of these new items are discussed next.

SUBCHAPTER VII. PROFESSIONAL AND ADMINISTRATIVE SERVICE

Purpose

Proposed new section 5371 declares that the purpose of subchapter VII is to establish a compensation plan for Professional and Administrative Service (PAS) employees according to the principles outlined in section 5301 of title 5.

Compensation Plan

Proposed new section 5372 provides for the establishment of a compensation system tailored to the PAS.

Subsection (a) grants to the President authority to initially establish, and thereafter adjust, the number of pay schedules required to effectively operate the PAS. Further, it grants him authority to adjust the pay schedule or schedules and to direct the comparability adjustment of the pay rates of individual employees.

This would permit the establishment of separate supervisory and non-supervisory schedules or the use of a single schedule for both groups, as appropriate. The authority also permits the flexibility to provide either a single rate or a pay range for each grade in contrast to the rigid step-rate structure presently specified in law.

Subsection (b) provides that the pay schedule or schedules for the PAS employees shall be applied on a uniform basis to all PAS employees.

Subsection (c) makes the President's Compensation Agent, as designated under section 5305 of title 5, responsible for assisting the President in the establishment and adjustment of the PAS pay schedule or schedules pursuant to section 5309.

Subsection (d) directs that the President's Compensation Agent shall prescribe the practices and procedures for conducting pay surveys; analyzing pay survey data; and developing, establishing, and administering pay schedules and pay rates or ranges. The processes which the agency may develop and implement to attain this pay-setting directive would ensure compliance with the principles set forth in section 5301 of title 5.

Subsection (e) directs that an employee whose position is placed in a grade having a range of rates of basic pay shall advance from one rate to the next within an appropriate grade when the employee's work is of an acceptable level of competence. Pay rate advancement would occur at the beginning of the first applicable pay period following the completion of:

- (1) each 52 calendar weeks of service from the minimum rate to that rate which does not exceed one-third of the range;
- (2) each 104 calendar weeks of service from that schedule rate which exceeds one-third of the range to that rate which does not exceed two-thirds of the range; and
- (3) each 156 calendar weeks of service for the remainder of the range.

Consistent with present policy, eligibility for successive incremental pay advancement would begin with each equivalent increase, and administrative law judges appointed under section 3105 of title 5 would not be subject to work performance requirements.

Subsection (f) continues present General Schedule policy which directs that Office of Personnel Management regulations shall preserve the benefit of successive pay increments for employees whose continuous Government service is interrupted in the public interest by service (1) with the armed forces or (2) in essential non-Government civilian employment during a period of war or national emergency.

Subsection (g) provides for a reconsideration of the determination that an employee's work is not of an acceptable level of competence.

Subsection (h) continues present General Schedule policy which provides that an increase in pay granted under sections 5305, 5382, and 5392 of title 5 is not an equivalent increase within the meaning of section 5372(e). In addition, it makes explicit what is now policy through interpretation that an increase in pay granted under section 5343 is not an equivalent increase for purposes of incremental pay advancement.

SUBCHAPTER VIII. CLERICAL AND TECHNICAL SERVICE

Purpose

Proposed new section 5381 declares that the purpose of subchapter VIII is to establish a compensation plan for Clerical and Technical Service (CTS) employees according to the principles outlined in section 5301 of title 5.

Compensation Plan

Proposed new section 5382 provides for the establishment of a compensation system tailored to the CTS.

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Subsection (a) directs that the pay of Federal clerical and technical employees shall be (1) set consistent with the public interest, (2) maintained in line with local pay rates for non-Federal work requiring similar levels of skill and ability, and (3) based on appropriate surveys of local pay or some statistical indication of the difference between national and local pay rates. Pay is presently set in accordance with national rates. This directive authorizes pay rates to be based on local pay surveys or on the basis of indexed inter-area pay level differences.

Subsection (b) specifically requires that the President's Compensation Agent shall:

- (1) initially establish and thereafter adjust one or more pay schedules as required to cover supervisory and non-supervisory positions with the stipulation that:
 - (A) the number of pay ranges are to be consistent with the number of grades established under section 5104 of title 5; and
 - (B) the spread from minimum to maximum of the ranges for each schedule is to be representative of the range of rates paid similar levels of work in the non-Federal sector nationwide and shall be applied uniformly to all localities;
- (2) define the geographic boundaries of individual local pay areas to coincide as nearly as practicable with those local wage areas for prevailing rate employees and provide that local area pay schedules be uniformly applied to the appropriate CTS employees of all agencies;
- (3) establish criteria prescribing minimum requirements before a pay area may be established;
- (4) prescribe methods to be used for fixing and adjusting pay rates for local CTS schedules to include full-field local pay surveys at least every three years with the use of interim survey updates or statistical indicators of changes in salary levels to adjust pay schedules, or in lieu of pay surveys, provide for annual pay schedule adjustments based on periodically updated relationships between local and national pay levels;
- (5) schedule timing of local CTS pay surveys so that the effective date for a pay rate adjustment coincides as nearly as practicable with the effective date of a wage increase for prevailing rate employees in the same locality;
- (6) prescribe practices and procedures for the conduct of full-field surveys to include:
 - (A) industry classes,
 - (B) minimum establishment sizes, and
 - (C) occupations to be surveyed; and

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- (7) review pay survey data summaries or locality pay difference data provided as a result of surveys that shall be conducted by BLS and develop appropriate pay schedules and make appropriate pay adjustments for each CTS area taking into account the difference in Federal and non-Federal benefit values in those adjustments, as directed by the President, in order to achieve total compensation comparability.

Subsection (c) directs the head of the agency to implement CTS pay schedules and rates established by the Agent for each area in which the agency has CTS employees.

Subsection (d) directs that an employee whose position is placed in a grade having a range of rates of basic pay shall advance from one rate to the next within an appropriate grade when the employee's work is of an acceptable level of competence. Pay rate advancement would occur at the beginning of the first applicable pay period following the completion of:

- (1) each 52 calendar weeks of service for employees earning from the minimum rate to the midpoint of the range, and
- (2) each 104 calendar weeks of service for employees earning from the midpoint rate to the maximum rate of the range.

The waiting periods for increases in pay would begin with the effective date of an equivalent increase in pay in both instances.

At present, pay advancement under the General Schedule is to the next successively higher step-rate within a grade based on the performance of work of an acceptable level of competence and is paid at the beginning of the next pay period following the completion of:

- (1) each 52 calendar weeks of service for employees in pay rates 1, 2, and 3;
- (2) each 104 calendar weeks of service for employees in pay rates 4, 5, and 6; and
- (3) each 156 calendar weeks of service for employees in pay rates 7, 8, and 9.

The proposed new subsection would reduce the waiting period for an increase from 2 years to 1 year for some employees in the middle 1/3 of the rate range, and from 3 years to 2 years for most employees who presently serve the longest periods of service performing the same level of work. The effect is to permit a more accelerated pace of movement within each grade for the CTS employees.

There is no change in the present General Schedule policy which establishes the date of an equivalent increase in pay to an employee as the start of the waiting period for the next within-grade increase.

Subsection (e) directs that the Office of Personnel Management shall prescribe regulations which will preserve the benefit of successive pay increments for employees whose continuous Government service is interrupted in the public interest by service (1) with the armed forces or (2) in essential non-Government civilian employment during a period of war or national emergency. This is not a change from present GS policy.

Subsection (f) provides for a reconsideration of the determination that an employee's work is not of an acceptable level of competence.

Subsection (g) continues present General Schedule policy which provides that an increase in pay granted under sections 5305, 5382, and 5392 of title 5 is not an equivalent increase in pay within the meaning of section 5382(d). In addition, it makes explicit what is now policy through interpretation that an increase in pay granted under section 5343 is not an equivalent increase for purposes of incremental pay advancement.

Subsection (h) establishes the policy that CTS pay schedule adjustments based on a pay review will be effective the first day of the first pay period which begins on or after the 120th day from the date the pay review is ordered to be made. At present, these adjustments are effective the beginning of the first applicable pay period after October 1 of the applicable year. This provision would reduce by approximately 5 months the existing lapsed time between the start of the salary survey and the effective date of any resulting pay adjustment.

Annual Report

Proposed new section 5383 directs the Agent to report the operating status of the CTS to the President annually for transmittal to the Congress. This continues the present practice of providing an annual report to the President on the operation of the Federal white-collar pay systems.

SUBCHAPTER IX. SPECIAL OCCUPATIONAL SERVICES

Purpose

Proposed new section 5391 declares that the purpose of subchapter IX is to provide for the establishment of a compensation plan for each Special Occupational Service according to the principles outlined in section 5301 of this title..

Compensation Plan

The several subsections of the new section 5392 describe the practices and procedures to be followed to implement policy governing the pay of employees under the Special Occupational Services.

Subsection (a) directs that in addition to the total compensation policy outlined in section 5301 of this title the pay for each of the Special Occupational Services shall be fixed and from time to time adjusted consistent with the public interest and comparable with non-Federal pay for the same levels of work.

Subsection (b) directs that the Presidents' Compensation Agent shall be responsible for establishing, administering and, when they are no longer needed, abolishing pay setting procedures in accordance with the purposes and policies in sections 5101 and 5301 of title 5. The procedures shall provide for:

- (1) definition of the boundaries of the pay area or areas determined by the Agent to be appropriate for pay rate determination;
- (2) collection, analysis, and use of data which shall be provided by BLS or another source and determined to be appropriate by the Agent;
- (3) agency participation as the Agent deems appropriate;
- (4) periodic compliance reviews of pay rates; and
- (5) taking into account the difference in Federal and non-Federal benefit values in making those adjustments, as directed by the President, in order to achieve total compensation comparability.

Subsection (c) of this section directs the Agent to establish, adjust, and abolish pay schedules for each Special Occupational Service which the Agent determines is needed. Such pay schedules would have a rate or range of rates of basic pay for each grade or pay level.

Subsection (d) directs that each employee holding a position in a Special Occupational Service shall be paid from the appropriate schedule in accordance with provisions of subchapter IX.

Subsection (e) delegates to the Office of Personnel Management responsibility for preparing standards or other instructions that place employees at proper levels when the Special Occupational Service does not have an established classification or job alignment plan as provided by chapter 51 of this title. Agencies may change, when the facts warrant, positions from one pay level to another. These actions of an agency are the basis for pay and personnel transactions unless changed by certificate from the Office of Personnel Management.

Subsection (f) directs that the Agent shall establish the policies and procedures for fixing the rates to be paid employees upon appointment, transfer, change of grade or pay level, or other personnel action and, as appropriate, conditions under which employees shall advance through the range of each grade or pay level.

Subsection (g) of this section directs the Agent to determine whether a Special Occupational Service's employees are entitled to overtime pay (or compensatory time off in lieu thereof), Sunday pay, holiday pay, standby or on-call pay, hazardous duty pay, or night differential pay. The Agent is further directed to establish conditions under which such payments shall be made and the rates of such payments.

Annual Report

Proposed new section 5393 requires the agent to report annually the status of each Special Occupational Service to the President for transmittal to the Congress. This continues the present practice of providing an annual report to the President on the operation of the Federal white-collar pay systems.

Subsection (cc) of section 3 amends the analysis of chapter 53 of title 5 to conform to the amendments made by section 3 of this bill.

Section 4. Prevailing Rate Systems Amendments

Subsection (a) of section 4 amends section 5343 of title 5 in subsection (a)(3) to conform to the amendments made by this section; in subsection (b) by substituting a requirement for full-scale wage surveys at least every third year instead of every second year as at present; in subsection (c) by striking out the reference in paragraph (1) to subsection (d) which is repealed by subsection (a)(6) of section 4 of the Act and eliminating the current restriction of wage surveys to private employers only (it will be proper under paragraph (1), as amended, for wages surveyed to include those paid by non-Federal activities outside of private industry to their regular full-time employees), by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting a new paragraph (5) requiring the office of Personnel Management to issue regulations governing the development of proper differentials for work performed at night provided that the differentials under this paragraph shall be part of basic pay (this new paragraph incorporates the provisions of current subsection (f) except that specific hours and uniform night differentials will no longer be specified by statute); by repealing subsection (d) relating to the use of out-of-area data in wage surveys (the so-called Monroney Amendment, originally enacted as section 4 of Public Law 90-560, approved October 12, 1968); by repealing subsection (e) relating to the requirement that each grade of a regular nonsupervisory wage schedule have five steps and that the payline be fixed at the second step (section 5343(e) as amended by this bill, in effect, would require the Office of Personnel Management to issue regulations for the establishment of wage schedules, including payline structure); and by repealing subsection (f) relating to uniform 7.5 and 10 percent night differentials (paragraph (5) of subsection (c), as amended by this Act, requires the Office of Personnel Management to provide for night differentials by regulation).

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Subsection (b) of section 4 provides that a prevailing rate employee who would otherwise have his/her pay reduced as a consequence of initial application of this legislation will receive a retained rate of pay.

Subsection (c) of section 4 provides that an employee on such retained rate will receive one-half of each subsequent wage adjustment until he/she is entitled to a higher rate of pay by normal operation of the wage system. It further provides a guaranteed minimum increase of three percent to each employee on the rolls on the effective date of the wage schedule issued pursuant to the first wage survey ordered on or after the effective date of this legislation.

Subsection (d) of section 4 gives the Office of Personnel Management the authority to issue regulations implementing this section.

Section 5. Premium pay and back pay amendments

Subsection (a) of section 5 amends section 4109(a)(1) of title 5 to authorize the payment of premium pay to nonexempt employees when the period of training is by, in, or through a Government facility.

Subsection (b) of section 5 editorially amends section 5541(2)(C) of title 5 by striking out the reference to subchapter III of chapter 53. This subsection further amends the definition of "employee" in section 5541(2) of title 5 by adding prevailing rate nonappropriated fund employees defined in section 5342(a)(2)(B) of title 5; by adding a group of prevailing rate employees of the Office of the Architect of the Capitol who are paid on a daily or hourly basis and who are not subject to chapter 5; and by repealing subparagraph (xi), which excluded prevailing rate employees (Federal Wage System employees) from the definition of employee. This will serve to bring all prevailing rate employees, those employees paid from appropriated and nonappropriated funds (including prevailing rate employees of the Veterans Canteen Service), under the general provisions of this subchapter for their entitlement to, and computation for, overtime, Sunday and holiday pay. A companion proposal will repeal sections 5544 and 5550 of title 5 which currently prescribe Sunday and overtime pay for these employees. The repeal of section 5544 of title 5 will also eliminate their statutory entitlement to overtime pay for standby duty. However, they will be entitled to overtime pay for standby duty under the general provisions of section 5542 of title 5. All prevailing rate employees will retain their entitlement to night differential and environmental differential under section 5343 of title 5. These amendments will extend statutory entitlement to holiday pay and call-back overtime pay to these prevailing rate employees for the first time. However, they have been receiving both holiday pay and call-back overtime pay under Commission regulatory authority (FPM Supplement 532-2) since the establishment of the Prevailing Rate System.

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This subsection further amends section 5541(2) of title 5 by adding two new exclusions from the definition of "employee." The exclusion of employees who are covered by Special Occupational Schedules established under the proposed subchapter IX of chapter 53, in conjunction with proposed section 5392(g) of title 5, will permit the President's Compensation Agent to establish premium pay for each such Special Occupational Schedule. This will permit appropriate treatment of diverse groups such as firefighters, law enforcement employees, and others. The exclusion of special project employees from the statutory provisions governing pay under the various Services and the prevailing wage schedules and from the usual provisions relating to hours of work and premium pay will permit the Office of Personnel Management to issue regulations governing premium pay of these employees. This subsection further amends section 5541 of title 5 by adding five new definitions. The definitions of "exempt employee" and "nonexempt employee" have been added for the purpose of dividing the Federal workforce into these categories based on the exemptions (primarily the executive, administrative, and professional exemptions) contained in section 13 of the Fair Labor Standards Act of 1938, as amended. All employees will be entitled to overtime pay under section 5542 of title 5 based on their exemption status under the FLSA. The definition for "hours of work" has been added to include the concept of suffered or permitted work as stated by the FLSA and also to include paid absences from duty. The definition for "hourly regular rate of pay" has been added to establish the rate of pay to be used in computing overtime compensation under this subchapter. The rate of overtime pay under title 5 will then parallel that used under the FLSA. The definition of "total remuneration" has been added to establish those items within the Federal service which shall be excluded in determining an employee's regular hourly rate of pay. These definitions will serve to clearly establish the amount of overtime compensation due Federal employees governed by this subchapter.

Subsection (c) of section 5 amends section 5542(a) of title 5 by defining overtime work as hours of work outside an employee's basic administrative workweek as defined in section 6101(a) of title 5 and which exceeds 40 hours in an administrative workweek. Thus, work performed by full-time employees during their basic 40-hour workweek is considered nonovertime work and work performed by employees outside the basic 40-hour workweek is overtime work. When an employee's basic administrative workweek includes night, Sunday, or holiday work, the employee shall be entitled to the appropriate premium pay for these unusual hours under sections 5545 or 5546 of title 5. However, when an employee performs overtime work (including work performed during unusual hours), the employee shall be entitled to overtime pay under this section. For part-time and intermittent employees, the hours of work must also be in excess of 40 hours in an administrative workweek to be considered overtime work. This amendment deletes the reference to work

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in excess of 8 hours in a day as overtime work and permits title 5 to parallel the FLSA in clearly establishing that work in excess of 40 hours in an administrative workweek is overtime work. This subsection further amends section 5542(a) of title 5 by establishing the rates of pay for overtime work. Exempt employees are to be paid for overtime work at rates to be prescribed by the Office of Personnel Management. Nonexempt employees are to be paid for overtime work at a rate of one and one-half times their hourly regular rate of pay. This is the same rate of pay prescribed by the FLSA. This will eliminate their entitlement to overtime pay at two different rates under two laws and the need to make dual computations to determine which law provides them the greater overtime pay entitlement. This proposed amendment, in conjunction with other proposed amendments to sections 5541, 5544, and 5550 of title 5 will provide overtime benefits for Federal employees under title 5 equal to or greater than those provided by the FLSA. This subsection further amends section 5542(b)(2) of title 5 to eliminate the current provisions of title 5 for time spent in a travel status as "hours of employment." The title 5 conditions for compensable travel time are replaced with the FLSA conditions when such travel time is considered hours of duty. This provision will apply only to nonexempt employees consistent with the FLSA. Exempt employees will be compensated for time spent in a travel status during overtime hours under such conditions and at such rates as may be prescribed by the Office of Personnel Management under the general provisions of section 5542(a) of title 5.

Subsection (d) of section 5 amends section 5543 of title 5 to ensure that an agency cannot direct its nonexempt employees to take compensatory time off in lieu of overtime pay. However, an agency may continue to direct its exempt employees to use compensatory time off. On the other hand, all employees, exempt or nonexempt, may continue to request compensatory time off instead of overtime pay. It must be reiterated, however, that the decision by a nonexempt employee to use compensatory time off, hour for hour, in lieu of overtime pay provided under section 5542 of title 5 must be truly voluntary. Furthermore, if at a later date a nonexempt employee cannot take the compensatory time off, for whatever reason, the employee will be paid for such time at the appropriate overtime rate under section 5542 of title 5. This provision for nonexempt employees to request compensatory time off is retained in title 5 on the premise that their overtime pay entitlement in this subchapter will be equal to or greater than their overtime pay entitlement under the FLSA in all cases. This subsection will extend the compensatory time off provision to prevailing rate employees. It is also intended that compensatory time off may not be granted for the value of that time which exceeds the rate for Executive Level V as limited by section 5308 of title 5 or premium pay in excess of the limitation imposed by section 5547 of title 5.

This subsection further repeals the authority of the Architect of the Capitol to grant (to direct) any of its employees compensatory time off. Since nonexempt employees cannot be directed to use compensatory time

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off, the authority of the Architect of the Capitol is no different than other Federal agencies. The Architect of the Capitol may continue to grant its employees compensatory time off under the general provisions of section 5543 of title 5.

Subsection (e) of section 5 amends subchapter V of chapter 55 of title 5 by repealing section 5544 of title 5 pertaining to pay for overtime and Sunday work by wage-board employees. By the amendments to section 5541 of title 5, these employees are to be included under the general premium pay provisions of this subchapter for overtime and Sunday work.

Subsection (f) of section 5 amends section 5545(a) of title 5 by providing that employees who perform nonovertime nightwork shall be entitled to night pay. Presently, nightwork must be regularly scheduled for an employee to be entitled to this premium pay. This provides conformity with the overtime pay provisions of section 5542(a) of title 5. When an employee performs nonovertime work (work during the basic administrative workweek) at night, the employee will be entitled to premium pay under this section. Conversely, the employee will be entitled to premium pay under section 5542(a) of title 5 for overtime work performed at night. This subsection also amends section 5545(c) of title 5 to limit annual premium pay for standby duty and administratively uncontrollable work to exempt employees and nonexempt employees engaged in fire protection or law enforcement activities. This section continues the conditions and rates of pay for such duty for exempt employees. However, this section will no longer be applicable for nonexempt employees, except for firefighters and law enforcement employees who are subject to the special overtime provision of section 7(k) of the FLSA. Nonexempt firefighters and law enforcement employees are entitled to overtime pay under the FLSA when their tours of duty exceed a specified number of hours in work periods between 7 and 28 days. In addition to annual premium pay under this section, these nonexempt employees will continue to be entitled to additional overtime pay (computed at one-half times their regular rate of pay) for excess hours in their tours of duty under the FLSA. However, if a group of employees in these occupations are included in a Special Occupational Schedule, this section will no longer be applicable to such employees. They will be paid premium pay as provided by section 5392(a) of title 5. This subsection also editorially amends section 5545(d) of title 5 by striking out reference to subchapter III of chapter 53 of title 5. This subsection further amends section 5545 of title 5 by excluding prevailing rate employees as defined by paragraph (2) of section 5342(a) of title 5 from the provisions of section 5545 of title 5. Such employees already have statutory entitlement to night differential and environmental differential under section 5343 of title 5 and are not currently paid on an annual premium pay basis under this section.

Subsection (g) of section 5 is a technical amendment to section 5546 of title 5 to provide conformity with the overtime provisions of section 5542(a) of title 5. When an employee performs nonovertime work (work

during the basic administrative workweek) on Sunday or a holiday, the employee will be entitled to premium pay under this section. Conversely, the employee will be entitled to premium pay under section 5542(a) of title 5 for overtime work performed on these days. This subsection further amends section 5546(a) of title 5 to limit premium pay for Sunday work to (1) the actual number of nonovertime hours worked on Sunday, or (2) one period of service. This will eliminate an employee's entitlement to Sunday pay for two shifts, a part of each being performed on Sunday (e.g., 8:00 p.m. Saturday to 4:00 a.m. Sunday, and 8:00 p.m. Sunday to 4:00 a.m. Monday).

Subsection (h) of section 5 amends section 5547 of title 5 by restricting the limit on aggregate compensation only to exempt employees. This removes the maximum earnings limitation for nonexempt employees and thereby parallels the FLSA.

Subsection (i) of section 5 amends subchapter V of chapter 55 of title 5 by repealing section 5550 of title 5 pertaining to pay for overtime and Sunday work for prevailing rate nonappropriated fund employees defined in section 5342(a)(2)(B) of title 5. By amendment to section 5541 of title 5, such employees are to be included under the general premium pay provisions of this subchapter for overtime and Sunday work.

Section 6. Attendance and Leave

Subsection (a) of section 6 amends section 6101(a)(1) of title 5 to use the same definitions of "agency" and "employee" that are being used for administration of premium pay under subchapter V of chapter 55 of title 5. Thus, the same agencies and employees will be covered by this section for work schedule purposes and subchapter V of chapter 55 for premium pay purposes. This subsection further repeals section 6101(a)(3)(D) to provide conformity with section 5542(a) of title 5; amends section 6101(a)(5) to make it applicable to employees of the Judicial Branch if determined to be appropriate by the Administrative Office of the United States Court; repeals section 6101(b)(1) which is no longer necessary since section 6101(a)(1) now defines those employees covered by this section; and amends section 6101(c) by replacing the Civil Service Commission with the Office of Personnel Management.

Subsection (b) of section 6 repeals section 6103.

Subsection (c) of section 6 repeals section 6104.

Subsection (d) of section 6 repeals section 6105.

Subsection (e) of section 6 provides for the addition of new sections 6327, 6328, 6329, and 6330 to title 5. Section 6327 replaces repealed sections 6103 and 6104 with some modification. Section 6327(a) replaces intact repealed section 6327(a) listing legal public holidays. Section 6327(b) clarifies the determination of "in lieu of" holidays when the legal holiday falls on an employee's scheduled nonworkday. The modification

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provided for closing the holiday on the work day closest to the actual date of the holiday. Section 6327(c) incorporates into law the provisions of Executive Order 11582 dealing primarily with the observance of holidays by first-40-hours-of-duty employees. The section of that Order dealing with the Postal Service was deleted because of overriding provisions of the Postal Reorganization Act. Section 6327(d) has been modified to clarify entitlement to a legal public holiday for D.C. metropolitan area employees who are scheduled to work on Inauguration Day. This is to be accomplished by adding specific language which restricts entitlement to employees who are scheduled to perform work on that day. This modification is consistent with Congressional intent at the time of passage and the subsequent rulings of the Comptroller General. Section 6327(e) replaces and modifies repealed section 6104. The modification extends the coverage from employees paid at a daily or hourly rate, or on a piecework basis, to all employees who have both a regular tour of duty and appointments not limited to 90 days or less. Section 6327(f) provides a statutory basis for the closing of an activity or a portion of an activity which relieves or prevents employees from working by administrative order as provided by Executive Order 10552. These closings are limited to circumstances which management determines do not allow the normal performance of work because of forces or events outside the control of management or affected employees. Section 6327(g) replaces intact repealed Section 6105. Section 6328 provides a statutory basis within title 5 for excusing Federal employees from duty in accordance with regulations prescribed by the Office of Personnel Management and designates such absences as administrative leave. It provides for short periods of absence, for extended periods of time for unique circumstances after approval by the Office of Personnel Management, and for those periods of dismissal by administrative order in section 6327(f). Section 6329 allows the Office of Personnel Management to prescribe regulations and generally administer those leave and absences under subchapter II of chapter 63. Section 6330 authorizes the Office of Personnel Management to provide for and otherwise regulate any other type of leave necessary to promote the efficiency of the service.

Subsection (f) of section 6 amends the catchline of chapter 63 and the heading of subchapter II of chapter 63. It also repeals subsection (c) of section 6322 which is provided for generally in the new section 6329.

Subsection (g) of section 6 amends the analysis of chapter 61 by striking out the repealed sections 6103, 6104, and 6105.

Subsection (h) of section 6 amends the analysis of chapter 63 to provide for the new sections 6327, 6328, 6329, and 6330 as provided for in subsection (e) of section 6.

Section 7. Pay Systems and Premium Pay Special Authority

Subsection (a) of section 7 amends subpart D of Part III of title 5 by adding a new chapter 50 which gives the President the authority to establish, modify or abolish Federal executive branch pay systems, premium pay and allowances provisions and requires the President's Compensation Agent to periodically review, and recommend to the President changes in, all Federal executive branch pay systems, premium pay and allowances provisions, including those established by statute to determine if particular pay systems, premium pay and allowances provisions, should continue to exist separately, should be eliminated or combined, or become part of the ongoing Government-wide system.

Subsection (b) of section 7 amends the table of chapters at the beginning of Part III of title 5 by adding "Chapter 50 - Special Authority."

Section 8. Technical and Conforming Amendments

Subsection (a) of section 8 amends section 2105(c)(1) of title 5 by striking out reference to section 5550 since it has been repealed and putting in its place reference to chapter 61 having to do with hours of work and subchapter V of chapter 55 and section 5002 of chapter 50 having to do with premium pay; amends section 3324(a) of title 5 relating to appointments at GS-16, 17 and 18 by redesignating these grade references as PAS-3, 2, or 1, respectively; amends the analysis of chapter 33 by striking out references to GS 16, 17 and 18, and relabeling those references as PAS-3, 2 and 1; amends sections 3109(b) and 6301(2) of title 5 by striking out reference to section 5332 since it has been repealed, and substituting in its place reference to subchapter VII of chapter 53 having to do with the PAS; amends sections 559 and 1305 by striking out "5335(a)" in each and inserting in lieu thereof "5372(e)." (This change is required because section 5335 relating to periodic step increases has been repealed and replaced by provisions in each one of the Services established in section 5301(d)); and amends section 5941(b) by inserting after "of this title" the following: "or an employee whose pay is set in accordance with rates of a locality pay schedule authorized under a Service established under section 5301(d)(1)(B) and (d)(2) of this title." (This section provides that employees stationed outside the continental United States or in Alaska and paid from either the CTS or Special Occupational Services (local) may not receive an allowance based on cost-of-living differences between the stations and Washington, D.C. This change is necessary because factors such as the cost of living would be accounted for in the local pay data from which CTS and Special Occupational Services (local) pay rates would be determined. This revision to title 5 would have no effect on PAS employees, i.e., PAS employees who meet the criteria of the cost-of-living allowance provision would remain eligible.

Subsection (b) of section 8 amends section 1586(g)(2) of title 10 to reflect the change from grade under the General Schedule to grade or pay level under the PAS, CTS, or Special Occupational Service; and amends section 548 of title 28 by striking out "of GS-18 of the General Schedule

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set forth in section 5332 of title 5 and by inserting in place thereof "payable under the Professional and Administrative Service established under section 5301(d)(1) of title 5." (This change is required because section 5332 relating to the General Schedule basic pay schedule has been repealed and replaced by the Services established in section 5301(d)).

Section 9. References in Other Laws

Subsection (a) of section 9 provides that any reference in any other law to the General Schedule or to a grade or pay rate of the General Schedule shall be deemed to refer to such Service, grade, or pay level as the Office of Personnel Management decides is appropriate.

Subsection (b) of section 9 provides that any reference in any other law to subchapter III of chapter 53 of title 5 shall be deemed by the Office of Personnel Management to refer to subchapters I, III, or VII-IX of chapter 53, as appropriate.

Section 10. Pay and Benefits Saving

Subsection (a) of section 10 specifies that the Office of Personnel Management shall prescribe regulations providing indefinite pay retention, and one half of the amount of each subsequent increase in the maximum rate of the grade to which assigned until the retained rate is equalled or exceeded by the maximum rate of the grade to which assigned, for employees whose pay would be reduced by reason of the initial application to their positions of one of the classification and pay systems established by this Act.

Subsection (b) of section 10 specifies that any change in classification and pay resulting from the initial implementation of the provisions of this Act will not be construed as adverse actions as defined in chapter 75 of title 5.

Subsection (c) of section 10 provides that there shall be no downward adjustment of benefit provisions during the first five years following the date of enactment.

Subsection (d) of section 10 protects the pay of special project employees on the rolls on the effective date of this Act.

Section 11. Effective Date

Subsection (a) of section 11 provides that, with the exception of the amendments to the Prevailing Rate Systems in section 4, the provisions of the Act will be placed into effect at such time as the President may direct within a 3-year period that follows the date of enactment by not more than 2 years. It is felt that two years is the amount of time needed to fully develop the regulations in order to begin implementing

the Services and an additional period of three years would be needed to phase in the CIS and Special Occupational Services (local) pay schedules due to the workload requirements of collecting and evaluating pay data for approximately 150 pay areas.

Subsection (b) of section 11 specifies effective dates for the provisions of section 4 of this legislation. With the next survey ordered after October 1, 1979, the Monroney Amendment will be eliminated; the requirement that full-scale surveys be conducted every two years will be changed to every three years; and the requirement that regular non-supervisory wage schedules have five step rates with the payline set at step two, and four percent increments between steps, will be eliminated. With the first full-scale survey after October 1, 1979, the requirement for uniform 7.5 percent and 10 percent night differentials and the limitation of survey coverage to private establishments will be eliminated.